



Michael Webb
Barrister

CONFIDENTIAL

**AUDIT REPORT IN RELATION TO THE
HAWKES BAY FISH AND GAME COUNCIL**

Michael Webb as Appointed Auditor on behalf of
New Zealand Fish and Game Council

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8 August 2019

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Mr Martin Taylor
Chief Executive
New Zealand Fish and Game Council
Wellington

AUDIT OF HAWKES BAY FISH AND GAME COUNCIL

I **enclose** my report on the audit of Hawkes Bay Fish and Game Council on behalf of the New Zealand Fish and Game Council.

Yours sincerely,

9(2)(a)



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Introduction

1. I have been appointed by the New Zealand Fish and Game Council ("NZFG"), with the support of the Department of Conservation ("DoC"), to undertake an audit by NZFG of the Hawkes Bay Fish and Game Council ("HBFG") under s26c(1)(i) of the Conservation Act 1987 ("the Act"), as set out in the Terms of Reference attached (the "Terms of Reference" or "ToR") – **Annex 1**.
2. The context for the audit was set out in a letter dated 24 September 2018 from Mr Martin Taylor, CEO of NZFG, to the Chairman and Councillors of HBFG.
3. Under the ToR the audit is to examine the activities of HBFG, including its Councillors, officers and employees, in relation to a number of specific matters. These are categorised under the headings of staff, enforcement, conflicts of interest, game bird regulations, election of HBFG Councillors, and HBFG Council meetings.
4. Under the ToR, as a general guide, the period to be reviewed in respect of the relevant matters is from 1 January 2013 to 31 August 2018. The ToR at (vi) also authorise me to report on certain other matters.

Process and approach

5. The audit of the matters set out in the ToR is what is commonly regarded as a "performance audit" rather than a "financial audit". Performance audits are in contrast to financial or financial report audits, which typically involve the audit of financial statements, accounts and other information that a public entity is required to have audited.¹ In contrast, a performance audit examines matters such as the extent to which a public entity is carrying out its activities effectively and efficiently, a public entity's compliance with its statutory obligations, or any act or omission of a public entity, to determine whether waste has resulted or may have resulted or may result, or any act or omission showing or appearing to show a lack of probity or financial prudence by a public entity or one or more of its members, office holders and employees.²
6. Under my retainer I have been required to undertake the audit in accordance with NZFG's Audit Policy dated August 2018 (including any modification agreed with NZFG in respect of this audit) and otherwise under such process, after conferring with NZFG and DoC, as I consider appropriate. I have had regard to the Auditor-General's Auditing Standard no. 5 (AG-5), together with various standards applicable to assurance practitioners and assurance engagements.

¹ For example, s15 of the Public Audit Act 2001.

² For example, s16 of the Public Audit Act 2001.

7. The process I have followed has involved interviews with HBFG Councillors as at the date of my appointment, together with certain other past Councillors, staff and others, and a review of material and information provided to me, principally by HBFG pursuant to formal information requests and also by interviewees, NZFG and DoC. My report is based on that material and information.
8. In the course of my audit I have had to address various procedural and related matters including in respect of the use, and confidentiality, of particular information, the Terms of Reference, and the scope of my report. Where I have considered it appropriate to do so I have canvassed these matters with HBFG, NZFG and DoC, and/or particular individuals.
9. Selected aspects of this report were provided to particular individuals for comment where I considered that appropriate. A draft of this report was provided through NZFG to HBFG for any comment for me to take into account, including as to factual accuracy and any adverse comment or finding in the draft. To the extent the comments received come within my Terms of Reference, I have taken them into account in preparing this final report.
10. I am grateful for the cooperation I have received from HBFG and its Councillors, NZFG and DoC. I have been assisted in aspects of my work by Mrs Lara Steel, Barrister, Auckland. Responsibility for this report is mine alone.
11. The views I have reached are my own views independent of any views of NZFG or DoC. This report is provided to NZFG as set out in my retainer and no obligation or liability is accepted to any other person.
12. The ToR cover a wide range of matters over a long period of time. It has not been practicable to review in detail every possible aspect of each matter over that whole period, or pursue every matter or question which has been raised in the interviews with me or in material provided to me. Instead, I have focused on the matters covered in the ToR which have, to me, appeared important following the interviews I have undertaken and the material I have reviewed. For the same reason I have summarised my views on various of the matters rather than detail in this report all the information I have received.
13. I also note that this is an audit report, and not a report of an inquiry under the Inquiries Act 2013, nor is it a legal opinion or any determinative finding on any issues of law or on the civil, criminal, disciplinary or other liability of any person.
14. Unless otherwise stated, references in this report to 'the Act' or to any section are to the provisions of the Conservation Act 1987, references to 'Councillors',

are references to the Council Members of HBFG, and references to the Board are to Council Members collectively, unless the context otherwise requires.

Background

15. HBFG is a regional fish and game council established by section 26P of the Conservation Act.
16. As a regional fish and game council, its functions are set out in section 26Q of the Act. Its 'primary' function under section 26Q is "to manage, maintain and enhance the sports fish and game resource in the recreational interests of hunters and anglers . . .". Section 26Q goes on to set out various particular functions.
17. In common with other regional fish and game councils, HBFG's key strategic and operational documents are its operational work plan and its sports fish and game bird management plan.
18. The Council is a body corporate, consisting of not more than 12 Members³. Councillors are elected by eligible New Zealand residents who hold an adult whole season licence to hunt game or fish for sports fish⁴Each such member elected holds office for a term of three years, and may be re-elected⁵. There is no limit on the times a member can be re-elected.
19. Councillors may at any time be removed from office by the Minister in the circumstances set out in section 26ZA(2). A fish and game council may at any time be discharged and any member may at any time be removed by the Minister for failure to carry out any of its functions under the Act, or the Wildlife Act 1953⁶.
20. Each fish and game council is required to meet on at least six occasions in the period 1 February to 31 December each year. No member is entitled to receive any remuneration, allowance or expenses in respect of his or her service as a member of that council.
21. The Councillors of each fish and game council appoint one of their number to be chairperson as set out in section 26ZC.
22. Under section 26D, each fish and game council is entitled to appoint one of its Councillors to be a member of the New Zealand Fish and Game Council, and any person so appointed may from time to time be reappointed.

³ S26U

⁴ SS 26U, 26Y and 26Z

⁵ S26ZA(1)

⁶ S26ZA(3)

23. In the period 1 January 2013 to 31 August 2018 HBFG comprised as its Councillors:

Year	Councillors
2013	Bruce Bates, Murray Boaler, Phil Dolding, Greg Duley, Jeremy Dearden, Graeme Jobey, John Lumsden, Jeff Niblett, Brad Pinker, Mark Pinker, Dean Roughton and Aaron Wakeford
2014	Bruce Bates, Murray Boaler, Phil Dolding, Greg Duley, Jeremy Dearden, Graeme Jobey, John Lumsden, Jeff Niblett and Aaron Wakeford
2015	Bruce Bates, Murray Boaler, Phil Dolding, Greg Duley, Graeme Jobey, John Lumsden, Jeff Niblett and Dean Roughton
2016	Bruce Bates, Kevin Williams, Greg Duley, Dave Hern, John Lumsden, Peter McIntosh, James Mackie and Jeff Niblett
2017	Bruce Bates, Kevin Williams, Greg Duley, Dave Hern, John Lumsden, Peter McIntosh, James Mackie and Jeff Niblett
2018	Bruce Bates, Kevin Williams, Greg Duley, Dave Hern, John Lumsden, Peter McIntosh, James Mackie and Jeff Niblett
2019	Bruce Bates, Gary Bowcock, Greg Duley, Dave Hern, Tony Hickmott, John Lumsden, Ross Mackay, Jeff Niblett, Bruce Nimon, Mark Pinker and Kevin Williams

24. The various Chairs of HBFG, and appointees to NZFG, from 2010 to date are as follows:⁷

Chair	Start date	End date
Greg Duley	November 2010	November 2016
Kevin Williams	November 2016	June 2017
Bruce Bates	June 2017	To present day

⁷ Table supplied by Chair of HBFG.

NZFG Council Appointee	Start date	End date
Aaron Wakeford	December 2012	July 2014
Graeme Jobey	July 2014	November 2015
Kevin Williams	November 2015	To present day

25. HBFG has in place a comprehensive set of Governance Policies covering a broad range of matters including culture, accountability, conflicts of interest and compliance, together with a detailed Councillor Guide, and material for Councillors as to relevant legislation.
26. From this material I observe that HBFG (as with other fish and game councils) has a significant range of responsibilities and obligations. These include under some nine Acts and Regulations described as "important" to fish and game councils, and some seventeen other Acts and Regulations fish and game councils are required to comply with. The Council of HBFG is currently made up of eleven part-time, unpaid members, expected to act in a governance role, but with staff numbers (including the Regional Manager) at relevant times in the low single figures.

Staff

27. My comments on staff matters in this report are made on the following basis:
 - (a) I have been provided with a substantial amount of information by interviewees and HBFG in relation to individual staff matters and the circumstances of individual staff members' employment and cessation of employment.
 - (b) That information has been helpful to me in seeking to understand the reasons for, and context of, staff turnover in the relevant periods, and I appreciate the cooperation I have received.
 - (c) At the same time, it is important to note, first, that much of this information is personal and sensitive. Second, in certain cases settlements have been entered into, including of a confidential nature, which it would be inappropriate to re-open. Third, an audit of this type is not an appropriate mechanism by which to make any findings regarding the circumstances of an individual's employment in a contentious situation, or any specific rights and wrongs on the part of either the employer or the employee.

- (d) In this report I therefore summarise the turnover of particular staff in the relevant period, and then make some comments of a general nature.

What turnover of staff has occurred over the last four years?

28. The following staff have been employed by HBFG between 31 August 2014 and 31 August 2018:

Name	Role	Dates
9(2)(a)	Fish & Game Officer	1 Apr 08 to 5 Aug 13 26 Nov 15 (six month contract) 20 Nov 17 (four month contract) 25 May 18 (four month contract)
9(2)(a)	Biodiversity Officer Acting Regional Manager joint role	1 Feb 10 to 29 Aug 14
9(2)(a)	Regional Manager	8 Jun 10 to 23 Jul 15
9(2)(a)	Fish & Game Officer	5 Aug 13 to 14 Aug 15
9(2)(a)	Acting Regional Manager	18 Aug 15 to Jan 17
9(2)(a)	Fish & Game Officer Regional Manager	29 Feb 16 to 8 Jan 17 9 Jan 17 to 3 May 18
9(2)(a)	Senior Fish & Game Officer	14 Mar 16 to 14 Sep 18
9(2)(a)	Administrator	4 Jun 08 to present
9(2)(a)	Regional Manager	24 Sep 18 to present

9(2)(a)

29. 9(2)(a)

9(2)(a) [REDACTED]
[REDACTED]

9(2)(a) [REDACTED]

30. 9(2)(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr Peter McIntosh

31. Peter McIntosh was the Regional Manager from 8 June 2010 to 23 July 2015.

9(2)(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

32. As well as holding the role of Regional Manager from 8 June 2010 to 23 July 2015, Mr McIntosh was in October 2015 elected as a Councillor of HBFGC. Four interviewees commented that his election was the subject of an active electioneering campaign by interests sympathetic to him and his position with HBFG. After his election as a councillor, Mr McIntosh did not attend any council meeting as a Councillor. This led to discussions within HBFGC and with NZFGC about how to deal with an absentee Councillor (noting that this was a term with only eight Councillors), but the situation continued with Mr McIntosh not attending until his term came to an end in October 2018.

33. In my view, the Peter McIntosh situation has significantly influenced views of different Councillors and affected the culture within HBFG. The circumstances of his employment and its termination have had, in my assessment, a polarising effect as between some Councillors and staff, affecting the culture within HBFG.

9(2)(a) [REDACTED]

34. 9(2)(a) [REDACTED]
[REDACTED]

9(2)(a) [REDACTED]

35. 9(2)(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9(2)(a)

36. 9(2)(a)

9(2)(a)

37. 9(2)(a)

9(2)(a)

38. 9(2)(a)

9(2)(a)

39. 9(2)(a)

What are the reasons for the turnover?

40. The reasons for the cessation of employment were expiration of the term, or a dispute between HBFG and the staff member involved, or resignation because of concerns.

Has the performance of HBFG in carrying out its statutory functions been compromised in any way by staff management turnover?

41. Based on the interviews I have undertaken and the material I have reviewed, in my view the turnover and reasons for the departure of various staff can be regarded as likely to have affected HBFG's performance and the atmosphere within the organisation, going to its efficiency and effectiveness. Comment has also been made to me to the effect that the turnover has impacted on the ability to recruit and the reputation of HBFG.
42. As noted above, in this report I do not assess individual responsibilities for the matters leading up to the departures of the various staff members or to re-open and try to identify and then form a view on the rights and wrongs which might have existed in individual cases, nor would it be fair on any of the parties involved for me to do so under the necessarily limited processes I have followed.
43. However, from my interviews and material I have been provided with, to the extent the effectiveness and performance of staff is a major factor in any

entity's performance, it has been viewed by interviewees as affected by the following in particular instances:

- (i) At times a difficult atmosphere within the office, summarised by some as toxic;
 - (ii) Concerns by staff or managers as to the attitude and actions of the board or individual Councillors towards or between them;
 - (iii) Concerns by Councillors as to observance by certain staff of policies and processes, and with staff performance;
 - (iv) Differences in view between staff members and Councillors on particular policy issues;
 - (v) Some tensions between the scientific and technical focus at a management and staff level and the general wish and obligation at Council level to pursue and enhance opportunities for fishing and game hunting.
44. I do, however, observe that notwithstanding the rights and wrongs of any particular individual situations, the Council itself has responsibility for being a good employer and for taking all practical steps to provide and maintain a safe working environment for employees.
45. From the material provided to me it does not appear that the Council as a whole sufficiently addressed the overall atmosphere and culture within HBFG over this period; instead, particular staff situations were handled on very much a case-by-case basis.
46. In my view the Council could have done more to collectively identify and address issues which were affecting staff attitudes or performance, and the atmosphere within HBFG. Assessing the position against the Council's own guides and policies including in respect of Council-Manager relationships, and monitoring of performance and organisational achievements, are important elements of doing this.

What were the circumstances of, and the processes followed, in respect of the appointment of the Chair of Hawkes Bay as Acting Manager of Hawkes Bay?

47. Following 9(2)(a) resignation, on 14 May 2018 Bruce Bates (Chair) called a public-excluded extraordinary meeting regarding the appointment of an Acting Regional Manager, at the request of Councillors Hern, Lumsden and Niblett. That meeting took place on 23 May 2018. Councillors Bates (Chair), Hern, Niblett, Lumsden, Duley and Mackie were in attendance. Councillor Williams gave his apologies. The Minutes record that discussion around the

table commenced regarding who was going to step in as Acting Regional Manager in the interim, until an appointment was made.

48. It appears that 9(2)(a) was not considered as a suitable appointment as Acting Regional Manager, and it appears there were no other persons employed by HBFG who could take on that role. It appears other names had been suggested as possible Acting Regional Managers (including 9(2)(a)), and another option suggested was to bring in an HR company to recruit a new Regional Manager. HBFG approached Eastern Fish and Game Council to see if they could provide a temporary person, but they were not in a position to do so. There is some divergence in views as to whether EFGC or 9(2)(a) were approached. Mr Bates said he approached 9(2)(a) but 9(2)(a) declined. 9(2)(a) says he was not approached.
49. Mr Bates was then approached by a group of Councillors as to whether he would act in the role pending a permanent appointment.
50. The minutes note that after a quick discussion a unanimous motion was put forward by all Councillors present as follows:
- 6.1 That all the Councillors at this extraordinary meeting have agreed for the Chairman to step in and take up the unpaid managerial position until such time as a new Hawkes Bay Fish and Game Manager [sic] is appointed.
51. The Minutes for the 21 June 2018 meeting record that there had been unanimous agreement at the 23 May meeting regarding the appointment of an Acting Regional Manager and the following resolution was agreed:
- 11.1 Council agreed to confirm what was unanimously agreed to at the extraordinary meeting which was to appoint Councillor Bates as the Acting Regional Manager (as an unpaid position) until such time as a new Hawkes' Bay Fish and Game Manager is appointed.
52. Mr Bates acted as Acting Regional Manager for approximately four months. He did not request, and did not receive, any remuneration for acting in that role.
53. On 7 August 2018 9(2)(a) was appointed as Regional Manager, taking up that role on 24 September 2018.

Comment on Mr Bates' appointment

54. Under s26T of the Conservation Act the Council may appoint a manager and other staff for the efficient and economic administration of the affairs of the Council.

55. Section 26ZC provides for the Councillors of each Fish and Game Council to appoint one of their number to be the Chairperson of that Fish and Game Council.
56. There is no prohibition under the Conservation Act from a Councillor, or Chairperson, concurrently acting as, or being appointed, a Regional Manager.
57. Clause 2.5 of HBFG's Governance Policy covers the position of the provision of services to the Council by Councillors, and in 2.5 a. provides that Members should generally provide business or professional services but does provide, in 2.5 b., for engagement for the purpose of a "special assignment" of a Member with particular expertise. There appears to be no policy addressing the appointment of an Acting Manager, or the appointment of such a person from serving Councillors. In my view it was open for HBFG under its statutory powers to appoint a Councillor as an Acting Manager.
58. In terms of assessing the "appropriateness" of Mr Bates' appointment, I note:
- (a) HBFG was in a difficult position given the circumstances of 9(2)(a) sudden departure.
 - (b) The position was seen as a short-term one, with a process being concurrently put in place for the search, selection and appointment of a permanent position.
 - (c) There are differences of view whether HBFG conferred with NZFG in relation to the appointment of an Acting Manager.
 - (d) there are precedents in the corporate sector for a Chair to take on the role of a Chief Executive on an acting basis.
59. However there are also some concern with the process and outcome:
- (a) There does not appear to be any discussion as to whether, if Mr Bates took on the acting regional role, he should continue in or step aside from his position as Chair.
 - (b) A process was not put in place to address areas where one person being both Chair and Acting Regional Manager may present a conflict in respect of role and performance.
 - (c) Mr Bates' appointment was proposed and resolved at the one meeting. This meant that one Councillor who had given an apology for non-attendance did not have prior notice of it so as to express a view on it.
 - (d) However, at the HBFG Council meeting on 21 June 2018 all Councillors, including the Councillor absent at the time of the extraordinary meeting,

confirmed Mr Bates' appointment. One Councillor, however, expressed reluctance about Mr Bates' appointment.

- (e) Mr Bates is not recorded as having left either meeting to enable the proposal or resolution of appointment to be discussed in his absence.

60. In my view, taking the matter as a whole, I believe the appointment of Mr Bates as Acting Manager was a pragmatic step in an urgent situation. I also note that Mr Bates did not receive any remuneration for acting in that role. I believe he took up the role in good faith.

Enforcement

What policies and procedures does Hawkes Bay have in relation to compliance or enforcement?

61. There are three key policies in procedures relating to compliance or enforcement. These are:

- (a) The National Prosecution Policy ("NPP");
- (b) A policy in respect of reparation under which reparations can be made in order to avoid charges in Court ("Reparations Policy"); and
- (c) A diversion policy ("Diversion Policy")

62. The NPP utilised by HBFG ties in closely with the Solicitor-General's Prosecution Guidelines (Crown Law Office, 1 July 2013).

63. An important aspect of any enforcement policy is consistency of approach on the one hand, while still maintaining the different options to address breaches or suspected breaches on the other. One of the means by which this is addressed is a requirement under the NPP for any breaches to be referred to the compliance officer for recommendations. There are processes in place to address the position should the recommendation be followed, or not followed. The final decision in respect of any breach is delegated to the manager.

64. From the terms of the NPP, reference is made to "legislation relevant to fish and game". However, the policy does not specifically define what offences under which legislation are specifically to be the subject of attention by fish and game councils.

65. One issue to me is the respective responsibilities of a regional fish and game council and the Department of Conservation in respect of breaches and enforcement of the Conservation Act and the Wildlife Act. In particular, it is unclear whether the responsibility of regional fish and game councils is limited to breaches of hunting and fishing licences and legislation relating to those

licence terms, or whether it also covers breaches of the Wildlife Act in relation to fish and game, for example, in relation to release of game birds.

66. It appears that in practice the focus of enforcement activity by HBFG (and possibly other regional Councils) is for breaches of hunting and fishing licences and relevant legislation relating to those licence terms.
67. Section 26Q does not expressly give regional fish and game councils the functions of enforcement of the Conservation Act and Wildlife Act in relation to fish and game offences. Section 26Q(1)(b) refers to ensuring "there are sufficient resources to enforce fishing and hunting season conditions".
68. The Conservation Act does appear to contemplate that fish and game rangers can, if so authorised, exercise their power to enforce or ensure compliance with the Conservation Act generally, or the Wildlife Act 1953. However, to do so appears to require development of a national policy to that effect, to be then approved by the Minister of Conservation (section 26HA of the Act), and reported on in NZFG's annual report under section 26HA. At this point such an extension does not appear to be in place.
69. DoC itself of course has a key role in relation to enforcement under the Conservation and Wildlife Acts. In that role DoC has both a National Compliance Strategy and a Prosecution Policy.
70. There appears to be no formal arrangement in place between DoC and HBFG (nor does it appear in the NPP) as to the respective roles of HBFG and DoC in relation to breaches of the Conservation Act or the Wildlife Act which may come to the attention of either body. In particular there appears to be no policy requiring, for example DoC to be informed should HBFG become aware of any alleged breaches of the Wildlife Act.
71. An important example of this issue relates to releases of game birds, where such releases may not be in terms of authorisations granted under the Wildlife Act. Whilst it appears that DoC seeks the views of HBFG in relation to the granting of any authorisation, comment has been made to me that DoC, not HBFG, has responsibility for pursuing any breaches or suspected breaches of any authorisation, not HBFG.
72. In my view the respective roles of regional fish and game councils and DoC in relation to enforcement under fish and game legislation should be clarified and set out in a memorandum between DoC, the regional fish and game councils and NZFG.

Were issues raised with or by Hawkes Bay in relation to compliance or enforcement? If so, what were they, how were they addressed, and what was the outcome?

73. I have reviewed two particular enforcement issues which I comment on below. No other significant enforcement cases have come to my attention in my review in respect of the relevant period.

The father and son matter

74. On 5 May 2018, on the opening weekend of duck hunting season, 9(2)(a) caught two people (a father and son) hunting without licences and with non-compliant shotguns (shooting lead shot with an unpinned shotgun). 9(2)(a) furnished a report to Mr Bates, who was by then the Acting Regional Manager, advising that they should be warned rather than prosecuted. Mr Bates at that time was Acting Regional Manager and the matter was dealt with on the basis of a warning letter from 9(2)(a) dated 29 June 2018. 9(2)(a) (National Compliance Officer) in fact advised that they should be prosecuted.
75. Mr Bates has commented that he did this on the basis of advice from 9(2)(a) with Mr Bates stating he and 9(2)(a) were misinformed by 9(2)(a) of 9(2)(a) recommendation. Mr Bates says 9(2)(a) informed them that his position (i.e. a warning) had been confirmed and sanctioned by 9(2)(a).
76. 9(2)(a) view was Mr Bates had said to him that due to changes of Fish and Game not being able to offer reparations he felt it was too costly to prosecute. 9(2)(a) comments to the effect that Mr Bates was party to the discussions with 9(2)(a) and had decided the letter should be signed by 9(2)(a). 9(2)(a) has stated he felt the letter should come from the Acting Manager. There is some difference of view between Mr Bates and 9(2)(a) on these matters. Nonetheless, under the delegations policy, the Regional Manager has the authority to make such a decision, which he did do.

The Mohaka matter

77. In October 2017, a compliance issue arose when three people fishing without a valid Fish and Game licence were caught by an honorary ranger on the Mohaka River. They advised the ranger to the effect that they had been sold the wrong licence (i.e. for the wrong region) by a hunting and fishing store. 9(2)(a), as Regional Manager, wanted to offer reparation under the Reparation Policy as a remedy, and initially sent a letter to those three people to that effect. This would have involved the three making a payment in lieu of a Court charge. 9(2)(a) states that from memory he spoke with 9(2)(a) who agreed this was a suitable way to proceed. 9(2)(a) has

informed me that the three people involved were not happy when they found out that they were being required to make payment and made contact with the hunting and fishing store, who made contact initially with 9(2)(a) to try and resolve it, but 9(2)(a) said he stuck to the reparation offer he had sent the three men. 9(2)(a) states the store manager then called the Chairman, Mr Bates, to try and get the decision changed. Mr Bates then spoke to the store manager who offered to provide equipment to HBFG for an annual children's fishing event, and requested that the fishermen be let off with a warning as it had been the store's mistake. Mr Bates and 9(2)(a) discussed the matter. 9(2)(a) says that Mr Bates told 9(2)(a) to issue the men letters of warning and withdraw the reparation fines. That is not Mr Bates' position. 9(2)(a) said he was not comfortable with that involvement of the Chair, nor with the donation of any free gear tied to the incident which, to him, "felt like bribery". 9(2)(a) said he spoke with 9(2)(a) about the matter and 9(2)(a) said that technically it may not have met the prosecution guidelines of a national prosecution policy if they had genuinely been sold the wrong licence type. 9(2)(a) states in the end he issued the men letters of warning to close off the files, but under no terms did he ever accept anything from the store in exchange for letting the three men off. Mr Bates states that 9(2)(a) was and remained in control of the matter, whilst 9(2)(a) position can be summarised as being that the gift aspect was not a matter he had agreed to.

78. Although resolution of this matter in this way may be seen as a pragmatic way of addressing it, in my view it does raise issues in relation to the treatment of breaches or alleged breaches under the relevant legislation. First, the relative involvement of 9(2)(a), Mr Bates and 9(2)(a) could, at a minimum, give rise to issues of misunderstanding and confusion of roles, and raises the issue of the appropriateness of the Chair's involvement. Secondly, resolution in this way gives rise to a perception, through the gift by the hunting and fishing store, that the matter had been dealt with for the purposes of financial gain to HBFG. Thirdly, resolution in this way is inconsistent with the relevant enforcement policies.

Conflicts of interest

What policies and processes are in place to identify and address any perceived or real conflicts of interest by councillors?

79. The HBFG has a Conflict of Interest Policy ("COIP") which was approved on 18 October 2016. In addition, conflicts of interest are addressed in the Standing Orders of HBFG. The COIP appears to apply generally to HBFG's activities, and the Standing Orders to HBFG Council meetings.

80. The COIP is set out in paragraphs 2.7 to 2.12 of the HBFG Governance Policies approved in June 2016. A related provision relating to pre-determination is set out in paragraph 2.12. These provisions are as follows:

"2.7 CONFLICTS OF INTEREST

- a. For the purposes of this policy, "**Matter**" means:
 - a.1 The Council's performance of its functions or exercise of its powers as set out in Part 5A of the Conservation Act 1987, subject to the Council's statutory purpose set out in section 26P(1) of the Conservation Act; or
 - a.2 An arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Council.
- b. For the purposes of these Governance Policies, a Conflict of Interest arises in respect of a Matter when the Member can be shown to have actual bias or apparent bias
- c. A Member can be shown to have actual bias when a Member's decision or act in relation to a Matter could give rise to an expectation of financial gain or loss (that is more than trivial) to the Member (and/or to the Member's parent(s), child(ren), spouse, civil union partner, de facto partner, business partner(s)/ associate(s), debtor(s) or creditor(s).
- d. A Member can be shown to have actual bias when a Member's official duties or responsibilities to the Council in relation to a Matter could reasonably be said to be affected by some other interest or duty that the Member has.
- e. A Member's "interest or duty" includes the interests of that Member's parent(s), child(ren), spouse, civil union partner or de facto partner that may be affected by the matter at issue. It also includes the interests of a person with whom the Member has a close, personal relationship where there is a real danger of personal favouritism.
- f. There is no Conflict of Interest where the Member's other interest or duty is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibility.

2.8 POTENTIAL CONFLICT OF INTEREST

- a. For the purposes of these Governance Policies, a Potential Conflict of Interest arises when:

- a.1 There is a realistic connection between the Member's private interest(s) and the interest(s) of the Council;
- a.2 The Member's other interest could specifically affect, or be affected by, the actions of the Council in relation to a Matter;
- a.3 A fair-minded lay observer might reasonably consider that the Member's private interest or duty may influence or motivate the actions of the Member in relation to a Matter; and
- a.4 There is a risk that the situation could undermine public trust and confidence in the Member or the Council.

2.9 DISCLOSURE

- a. A Member with a Conflict of Interest or a Potential Conflict of Interest must identify the conflict and disclose it to the Council in a timely and effective manner. The Member must disclose:
 - a.1 The nature of the interest and the monetary value of the interest (if the monetary value can be quantified); and/or
 - a.2 The nature and extent of the interest (if a monetary value cannot be quantified).
- b. If a Member is uncertain of whether there is any Conflict of Interest or Potential Conflict of Interest, the Member should disclose it to the Council as a Potential Conflict of Interest for consideration by the Council
- c. The disclosure of any conflict must be recorded in the minutes and entered in a separate interests register.

2.10 DEALING WITH THE CONFLICT OF INTEREST

- a. When a Conflict of Interest arises in respect of a Matter, the affected Member:
 - a.1 Will be excluded from discussions regarding the Matter (including not being in the same room when the Matter is discussed);
 - a.2 Will not vote on issues related to the Matter;
 - a.3 Will not receive papers or any other information on the Matter; and
 - a.4 Will not discuss the Matter with other Members.

2.11 DEALING WITH A POTENTIAL CONFLICT OF INTEREST

- a. Where there is a Potential Conflict of Interest, the Council (excluding the affected Member) will determine an appropriate course of action, which may include the following:
 - a.1 Applying some or all of the Actions applied to a Member with a Conflict of Interest (set out at 2.10.a);
 - a.2 Sending a written explanation to stakeholders, members and licence holders outlining why there is no legal conflict of interest; and/or
 - a.3 Monitoring the Matter to determine whether at any point the Matter changes such that there is a Conflict of Interest.
- b. In determining the appropriate course of action, the Council will have regard to:
 - b.1 The type or size of the Member's other interest;
 - b.2 The nature or significance of the relevant Matter; and
 - b.3 The extent to which the situation could undermine public trust and confidence in the Member or the Council.
- c. The Member will be given the opportunity to be heard by the Council on the points in 2.11.a and 2.11.b and the Member's submissions will be taken into consideration by the Council.

2.12 PREDETERMINATION

Where a Member can be shown to have a closed mind to a decision, such that their approach to a Matter is likely to be predetermined, they will be excluded from participating in the Matter in the manner set out in 2.10.a."

- 81. These policies are, I am informed, consistent with the policies of NZFG and based on them.
- 82. In addition, the subject of conflict of interest is addressed in the Standing Orders of HBFG, paragraph 1.13 of which provides as follows:

"1.13 CONFLICT OF INTEREST

Financial Interests

- 1.13.1 Every member present at a meeting must declare any direct or indirect

financial interest that they hold in any matter being discussed at the meeting, other than an interest that they hold in common the public.

1.13.2 No member may vote on, or take part in a discussion about, any matter in which they have a direct or indirect financial interest. Where practical, members with a financial interest should leave the meeting for the duration of the discussion.

1.13.3 The minutes must record any declarations of financial interests, and the member's abstention from the discussions and voting on the matter.

Non-financial interests

1.13.4 Where a member declares a non-financial interest in any matter, the member may decide whether that matter constitutes a conflict. If the member considers that there is a conflict, they may not take part in the discussions about or vote on that matter

1.13.5 The member must leave the table when the matter is considered, but does not need to leave the room. The minutes must record the declaration and member's subsequent abstention from discussion and voting."

General observations

83. Before I comment on how these policies and processes have been applied in particular instances, I make some general observations which are important to understanding and considering this topic.

84. First, the Conservation Act, which establishes fish and game councils, does not itself contain any statutory regime for addressing conflicts of interest. The Crown Entities Act 2004, which does contain provisions relating to conflicts of interest, do not apply to fish and game councils. This means that the provisions of HBFG relating to conflicts of interest fall to be determined by the policies they put in place and, to the extent applicable, the common law.

85. Second, the provisions of the COIP and the Standing Orders, both individually and in their interrelationship, in my view give rise to some difficult issues of interpretation and application. I comment on this aspect further below.

86. Third, the COIP and the Standing Orders do not have a provision equivalent to s62(3)(ca) of the Crown Entities Act 2004. That provision, inserted in July 2013, provides that a person is not interested in a matter "only because he or she has a past or current involvement in the relevant, sector, industry or practice". The absence of such a provision in the COIP increases the uncertainty relating to situations where an involvement in the fish and game

sector or community may give rise to claims of conflicts or potential conflicts of interest, including in discussion of matters of policy or matters (e.g. season terms) where those involved all may, on one view, be said to have an interest

87. Fourth, the Office of the Auditor-General has issued important guidance in relation to managing conflicts of interest ("Managing conflicts of interest: Guidance for public entities", June 2007). It does not appear that the Council has, in its meetings or as part of its processes, formally considered those guidelines or applied them in particular cases.
88. Difficulties in interpretation and application of the COIP and Standing Orders include:
 - (a) A test under the COIP of whether there is a conflict of interest itself (i.e. an "actual conflict") is stated as arising in respect of a matter where the member can be shown to have "actual bias or apparent bias". Actual bias is defined as including when a member's decision or act "could give rise to an expectation of financial gain or loss" to the member or associated parties, or (in relation to non-financial gain or loss) when the member's official duties or responsibilities to the Council in relation to a matter "could reasonably be said to be affected by some other interest or duty that the member has".
 - (b) In contrast, a "potential conflict of interest" is stated as arising when there is a "realistic connection" between the member's private interest and the interest of the Council; or when the member's other interest could specifically "affect or be affected by" the actions of the Council in relation to a matter where a fair minded observer might "reasonably consider" that the member's private interest or duty "may influence or motivate the actions of the member in relation to a matter" and there is a risk that the situation could "undermine public trust and confidence in the member of the council or the council".
 - (c) In my view there is a real overlap between the test for an actual conflict of interest and a potential conflict of interest, requiring difficult judgement calls having to be made in many situations and involving legal questions which would be challenging to a lawyer let alone a board. Yet the distinction has important consequences in that, if it is an actual conflict of interest, the Councillor must be excluded from discussions, cannot vote, will not receive papers, and will not discuss the matter with other Councillors. In contrast, if there is a potential conflict of interest, the council (excluding the affected member) has flexibility in determining an appropriate cause of action, which could include either the member not being involved at all, or alternatively, participating but not voting.

- (d) To further complicate the matter, the Standing Orders which appear to govern meetings do not make the same distinction which exists in the COIP between "actual" and "potential" conflicts of interest. The Standing Orders do not set out any test for defining what constitutes a direct or indirect financial interest. In respect of non-financial interest, the Standing Orders enable (but do not appear to require) a member to declare any such non-financial interest in any matter and it appears from the wording of those Standing Orders that it is for that member to decide whether that matter constitutes a conflict (rather than the council). If the member considers that there is a conflict, he or she may not take part in discussions about or vote on that matter. It then appears that if a member considers there is a conflict, the member must "leave the table", but does not need to leave the room. In other words, if the member decides that the matter constitutes a conflict it appears he or she could stay in the room and hear the discussion, but not participate in discussion or voting, whilst if it is a conflict of interest under the COIP, the member is excluded from discussions and cannot be in the same room, nor vote, nor receive papers or discuss the matter with any other Councillors.
- (e) Consideration also needs to be given as to the extent the individual position of Councillors constitutes an actual or potential conflict of interest on generic or policy matters and how they will be managed. For example, a Councillor who has or intends to hold a hunting licence could, on one view, be said to have an interest in the terms of a particular season and notification. On policy issues, any Councillor who is a communal guide could, on one view, be said to have an interest in agenda items relating to whether legislation should be enabled to restrict communal guiding in relation to sports fishing; similarly Council members who were landowners in relation to access over land. Yet it could be said that robust debate could be inappropriately trammelled if the viewpoint of particular Councillors who were guides could not be canvassed or be part of a decision-making process. It would be useful if governance policies addressed practical situations such as this in terms of whether an actual or potential conflict exists and, if so, how it can be managed (if at all).
- (f) Consideration could, in my view, also usefully be given as to whether, absent changes to the Act, the conflict of interest policies should generally be reviewed and simplified, for example along the lines of sections 62-68 of the Crown Entities Act, which, as well as being more concise, do not differentiate between actual and potential conflicts of interest.

89. There is also a conflict of interest register in addition to the COIP. Prior to August 2017, the register was only signed by the relevant Councillor if a conflict was raised. From around August 2017, it became and remains a requirement that every Councillor signs the register at the start of the meeting, even if to declare that they have no conflict of interest.

Have the policies and processes been followed?

90. According to Council meeting minutes, the following conflicts of interest have been registered at Council meetings since 2014:

- On 12 February 2013, Councillor Niblett registered a conflict of interest with agenda item 6, regarding the releasing of mallard ducks, and general business item, monitoring of mallard ducks. Council endorsed staff to support and assist the monitoring of mallards reared at and released as part of local population seeding. Councillor Niblett tabled a conflict of interest and abstained from the discussion.
- On 18 August 2015, Councillors Niblett and Bates registered conflicts of interest. Councillor Niblett's was in relation to the junior hunt, media coverage and pheasant release. Councillor Bates' concerned non residence fishing licence revenue. Councillor Bates registered his potential conflict of interest, stating he operated a guiding business. Councillor Duley (then-Chair) invited Councillor Bates to stay in the meeting and contribute to the discussion.
- On 20 October 2015, Councillor Niblett advised he had a potential conflict of interest with the agenda item relating to the 2016 Game Season Conditions relating to preserves, as a preserve operator. The Council resolved that he could remain in the room and contribute to the discussion but abstain from voting.
- On 17 November 2015, Councillors Niblett and Hern advised they had a potential conflict of interest with the agenda item relating to the 2016 Game Season Conditions. 9(2)(a) (Acting Regional Manager) advised that the Council would primarily be discussing and setting game bird season lengths and bag limits, and in his opinion, it was unlikely this would constitute a conflict of interest for either Councillor. However, he said that if during the course of these discussions it became apparent there was a conflict(s), it could be disclosed and dealt with at that point.
- On 2 May 2016, four of the six Councillors present (Councillors Niblett, Bates, Hern and Mackie) advised at the commencement of the meeting that they had conflicts of interest or perceived conflicts of interest with the agenda item relating to captive reared mallards:

- Councillors Hern, Bates and Mackie as a receivers of captive reared mallards; and
- Councillor Niblett as a game farm operator.

It was agreed that, as there were only two non-conflicted Councillors in attendance (Councillors Williams and Duley) and no resolution required, the conflicted Councillors could contribute their thoughts on the discussion.

In addition, Councillor Hern registered a conflict of interest with an agenda item regarding magazine capacity, as he sold guns. Mr Bates registered a conflict in relation to the angler notice review agenda item, as he is a professional fishing guide.

- On 9 August 2016, Councillor Hern registered a conflict of interest, with no reason given.
- On 18 October 2016, although the Minutes state that no conflicts were registered, the register shows that Councillor Hern registered a potential conflict regarding gun sales, and Councillor Niblett registered a conflict regarding preserve game season conditions
- On 14 February 2017, Councillor Bates registered a conflict with an agenda item regarding fishing regulations, as he is a professional fishing guide.
- On 11 April 2017, Councillor Niblett noted that he may have a potential conflict of interest with the OWP discussion regarding captive reared mallards and junior hunting preserves. Councillor Bates registered a potential conflict regarding licence categories.
- On 8 August 2017 it was resolved that:

Councillors disclose any Conflict or potential Conflict of Interest, record it in the Interest Register, and Council agrees on how to deal with any Conflict of Interest raised. The register is to be signed at each meeting by all Councillors regardless of whether Councillors have a conflict of interest or not.

At that meeting, Councillor Lumsden registered a conflict of interest regarding the Ngaruroro water conservation order (WCO), as the wine company he works for takes water from the Ngaruroro.

- On 17 October 2017, Councillor Bates registered a conflict in relation to the Ngaruroro WCO, noting that his family had made a submission in relation to the WCO.

- On 30 November 2017, Councillor Bates again registered a conflict in relation to the Ngaruroro WCO, noting that his family had made a submission in relation to the WCO.
- On 13 February 2019, Councillor Bates declared a conflict of interest regarding angler notices and Councillor Niblett declared a conflict in relation to captive reared mallards.
- On 3 April 2018, Councillor Bates registered a conflict again in relation to backcountry fishing surveys.
- On 23 May 2018, Councillors Duley and Bates registered conflicts of interest.

Do any councillors have, or have they had, any perceived or actual conflict/s of interest?

91. Councillor Niblett operates New Zealand Game Birds, which breeds game birds for commercial gain. He regularly declares a conflict of interest in relation to matters arising from this pecuniary interest. He has also declared conflicts of interest in relation to game season conditions for preserves, as a preserve operator.
92. Councillor Bates operates a hunting and fishing guiding business on Ngamatea Station and has declared conflicts of interest in relation to this. He has previously declared a perceived conflict of interest as a receiver of captive reared mallards. He has also registered a conflict in relation to the Ngaruroro WCO, noting that his family had made a submission in relation to the WCO.
93. Councillor Lumsden works for Sacred Hill and has declared a conflict of interest in relation to the Ngaruroro water conservation order, as the wine company takes water from the Ngaruroro.
94. Councillor Hern is a guide and formerly owned a hunting and fishing store. He has previously declared a perceived conflict of interest as a receiver of captive reared mallards, and as a salesperson in the industry.
95. Councillor Mackie has previously declared a perceived conflict of interest as a receiver of captive reared mallards.
96. A comment has been made to me that particular family members of Councillor Williams were beneficiaries of a \$9,625.00 Habitat Grant in respect of Springvale Station and raising the question of Councillor Williams not declaring a claimed "conflict of interest".
97. Councillor Williams commented in response to the effect that there is no connection between HBFG and the New Zealand Game Bird Habitat Trust

Board which are two separate statutory entities, and that Springvale Station is owned by his partner's son's wife's father. Mr Williams does not consider he has ever had a conflict of interest in this regard.

98. From my perspective it appears that funding decisions for Habitat Grants are not made by HBFG, they are made by the Trust Board, although it does appear HBFG has a place in the process.
99. I note Councillor Williams' comment as to the ownership of Springvale Station.

Are there any inconsistencies in the declaration of conflicts of interest?

100. Anglers notices were discussed, and voted on, on 9 April 2013, 11 June 2013, 8 April 2014, 11 June 2014, 7 April 2015, 8 June 2015, 16 February 2016, 14 June 2016, 9 August 2016, 14 February 2017, 11 April 2017, 13 June 2017, 8 August 2017, 3 April 2018 and 21 June 2018. Mr Bates declared a conflict of interest on 2 May 2016, 13 February 2018 and 3 April 2018. The latter two of these instances appear to concern backcountry fisheries and the 2 May 2016 conflict was declared in respect of an agenda item concerning angler notice review given his position as a professional fishing guide.
101. Councillor Niblett abstained from voting on the question of release of pheasants on 20 August 2013, but it is not recorded in the conflicts of interest register.
102. No one recorded a conflict of interest on 15 October 2013, 26 November 2013, 14 October 2014, 25 November 2014, 29 November 2016 or 30 November 2017 regarding amendments to game season conditions.
103. On a meeting on 1 July 2014 Councillor Niblett voted on a number of matters concerning the OWP that related to funding for mallard banding.
104. On 17 September 2015 Councillors Niblett and Bates did not join in a discussion about balloted pheasant blocks and a junior shoot, but it was not recorded as a conflict of interest. Councillor Bates said that the specific discussion related to specific land allocated and overseen by HBFG and he out of care did not participate in the discussion.
105. There are multiple instances where matters such as banding and captive reared mallards have been discussed but not voted on, and no conflict of interest recorded. I do not consider Councillor Niblett's game bird business by that fact alone constituted an actual or potential conflict of interest in respect of banding or captive reared mallards matters generally, noting that Mr Niblett has declared conflicts of interest in particular instances.

How has the Council handled any question on private capture of public hunting or fishing resources?

General

106. The subject of private capture of public hunting or fishing resources has in the fish and game sector commonly been embraced by the term “exclusive capture”.
107. “Exclusive capture” or “private capture” are not terms used in relevant legislation relating to the fish and game community, but the expressions have been used within NZFG and the fish and game community to describe an issue which has been the subject of significant discussion in the fish and game community for a long while. The issue has been described by NZFG as follows:⁸

“Exclusive capture.

This is an issue predominantly for anglers and hunters, but has implications for other parties. Wildlife and fisheries do not attach to land title and should be accessible to the public, especially the public who pay licence fees to hunt/fish. Specific provisions in the Wildlife and Conservation Acts preclude the sale of hunting and fishing rights.

In some situations, however, land owners have sought to exclude those who did not either pay/stay or use the services of particular commercial guides. Fish & Game, anglers and hunters are seeking that the matter is properly addressed. Even if it does not directly relate to non-anglers/hunters, the issue is that access may be ‘captured’ to public resources by land owners.

Fish & Game’s position is that New Zealanders have “fair and reasonable access on foot along the coastline, rivers, around lakes and to public land”.

Property rights.

Achieving the right balance between public and property rights is essential. Land ownership is not absolute; the Queen’s chain exists in many areas, there are plenty of unformed public roads and water and fisheries and wildlife do not attach to the title in New Zealand as they do in other countries. The public can, and do, reasonably expect reasonable access to their own resources, while recognising legitimate private property interests where these exist.

⁸ <https://fishandgame.org.nz/about/f-and-g-position-statements/land-access/>

Negotiation.

Negotiation on a case-by-case basis is usually supported, but the basis for the negotiation needs to be clearly specified. The issue is how to achieve the objective of walking access, not whether this is a valid objective. Negotiation should be the preferred option for all parties to achieve an enduring and equitable result, but if either party refuses to negotiate that should lead open the option for a decision to be considered without that party's involvement."

NZFG's role

108. In NZFG's statement of service performance for the year ended 31 August 2018, Output Class 3: Angler and Hunter Participation, includes as an activity "Advocate for Public Access to the Resource", with the performance standard relating to that described as "Advocate the ability for anglers and hunters to gain free-foot access to the fish and game resource", with the performance results being described as "On-going general advocacy, including in media & meetings of MPs and officials".

109. Regarding its licence fees, NZFG states that, in relation to the costs attributable to management of the fish and game resource, 16% of the licence dollars go towards "access and participation – negotiating and advocating access for licence-holders; maintaining a network of access signage, information brochures; organising special fishing and hunting days".

HBFG's role

110. In relation to HBFG as a fish and game council with the functions set out in s26Q of the Conservation Act, it is provided that "the functions of each fish and game council shall be to manage, maintain, and enhance the sports fish and game resource in the recreational interests of anglers and hunters, and, in particular –

"(a) . . .

(b) To maintain and improve the sports fish and game resource

(i) By maintaining and improving access; . . ."

111. HBFG's Operational Work Plan for 2017-18 refers in its mission statement to the functions of Fish & Game New Zealand, as described by the Conservation Act 1997, as including "maintaining and improving access". As set out in that

Operational Work Plan Council considered the following as priorities for the 2017-2018 Year:

- RMA issues that involve the potential loss of habitat for sports fish (water quality and quantity) and game birds (including upland game); the Ruataniwha Water Storage Project and Tukituki Catchment Plan Change 6; water take consents; and Catchment Plan Changes for the Tutaekuri, Ahuriri, Ngaruroro, Karamu (TANK), and the Mohaka.
- The Ngaruroro WCO.
- Participation in the East Coast Mallard Research Programme (based on Duck Management Units (DMUs).
- Habitat related activities aimed at enhancing wetlands and waterfowl production which includes investigating the impact of predators.
- Hunter participation – junior hunts and balloted blocks
- Compliance – increasing compliance activities in conjunction with education.
- Licencing – work both regionally and nationally to promote an increase in licence sales.

112. Under the heading of 'Access/Client Servicing' the key projects for 2017-2018 were:

Key Projects 2017-2018

- Maintain the current level of access and signage across the region.
- Engage with the Walking Access Commission to improve access where possible.
- Improve and/or clarify access to public areas for game bird hunting.
- Increasing junior and female participation in both fishing and game bird hunting.

Developing Issues

- Promotion and clarification of access to fishing and hunting opportunities as they arise.
- Competing leisure activities and financial constraints changing people's spending priorities and the way they spend their time.

113. It appears that HBFG has proceeded on the basis of that Work Plan and in the period under review no initiatives appear to have been put forward to, or

discussed by, the Council to specifically addressing the issue of “exclusive capture”, either generally or in relation to any particular property. Nor does it appear that NZFG has made any request of HBFG to consider or address any such initiatives.

Is any councillor involved in any commercial or non-commercial activity that may conflict or cause a perceived conflict with the HB’s policies and processes or the legal obligations of the HB or a HB councillor (including in relation to promoting and enhancing public access to angling and hunting resources)?

114. I consider this question in relation to two particular matters which have been the focus of my discussions and review – (i) exclusive capture and the Ngamatea Station, and (ii) captive reared mallards.

Exclusive capture and the Ngamatea Station

115. Ngamatea Station is a large high-country sheep and beef station covering some 70,000 acres. Its topography provides wilderness for fishing and hunting opportunities and the ability to access two of New Zealand’s top back country fisheries; the Tararua and Upper Rangitikei River systems.

116. The Chair of HBFG, Mr Bruce Bates, is associated with Ngamatea Station and in the period of review it appears that Councillor Bates’ position, given Ngamatea, has been the subject of some controversy and discussion, including at NZFG level, for a long while

117. For instance, in 2010 Mr Lindsay Lyons, then an NZFG Councillor, wrote to the then-Chairman of NZFG by letter dated 13 April, raising issues as to whether Councillor Bates, given his role at Ngamatea, should either relinquish all interests in his guiding business at Ngamatea, or resign as a fish and game Councillor.

118. On 7 March 2012 Chen and Palmer provided a legal opinion on Councillor Bates “real or perceived conflict of interest” arising from Bruce Bates as an appointee of NZFG. That opinion was stated as following initial advice on 30 May and further advice on 13 February, and 23 February 2012, and took into account other material, including a response from Councillor Bates dated 19 January 2012 disputing the opinion, together with a report from the New Zealand Walking Access Commission dated 14 April 2011.

119. In my view it is important to note that, as the law currently stands, consent is generally required to access or pass through private property of a land owner to access resource.

120. Promotion of access is a statutory objective of both NZFG and HBFG under the Act. That could involve both working to negotiate with particular land owners access over their property on an agreed basis, or advocating for a change in legislation so as to give hunters and fishers greater rights of access over private property without landowner consent. However, in my view the fact that a particular Council member may own private land or be associated with private land, and not give or be instrumental in giving agreement to access over that particular land the Council member owns or is associated with, is not somehow in the nature of a disqualification to that person either holding office as a Councillor or in some way an overriding interest which prevents or constitutes a conflict with all of the objectives of HBFG such that that person cannot or should not be a Councillor. To some, it may be relevant to voting decisions as to whether to elect such a person as a Councillor, but it is not, in my view, a legal or some other type of disqualification.
121. A Councillor may have a conflict or potential conflict of interest if there was an initiative by HBFG or within HBFG whereby HBFG sought to obtain agreement from that Councillor to access a property involving that Councillor. More generally, if there was a specific proposal, for example put forward by NZFG for adoption by HBFG, or from within HBFG itself, to advocate for a change in legislation enabling access over private land absent the landowner's consent, every Councillor owning relevant land would need to consider their position.
122. From my review of the material referred to above, and in my discussions with the people I have interviewed, it appears that there has been no such initiative in respect of any particular property of a Councillor, including Ngamatea, raised by either management of HBFG, or any Councillor. Nor has any such proposal to my knowledge been put forward by NZFG to HBFG for consideration. No specific initiative was set out in the Operational Work Plan of HBFG in the relevant period.
123. I add that I visited Ngamatea Station as part of this audit in the company of Councillor Bates. Because of the topography of the area, with very steep ground and tracks, it is evident to me that access by anyone would need to be addressed with great care from a safety perspective. In addition, Ngamatea is an operational farm. It appears reasonable to me that, as such, free access is not given by the land owner to anyone wanting to cross over it. I note the New Zealand Walking Access Commission came to a similar view.⁹
124. It is apparent to me that strong views on the topic of exclusive capture have meant significant heat has been generated by this issue. In my view this appears to have coloured and affected the workings of HBFG and the

⁹ Letter dated 14 April 2011 from Mr R J McGregor, New Zealand Walking Access Commission, to Mr Bruce Bates.

relationships between Councillors, and between particular persons in NZFG and HBFG. It is also apparent that these issues have been around for a long while. It is unfortunate that they have not been addressed one way or the other, both in terms of deciding whether or not there was a conflict of interest, including through obtaining a Court decision if needed, and also by the issue being the subject of a constructive dialogue between the parties, even with agreement to disagree and formal decisions made, both at NZFG and HBFG level, as to what, if any, action on the topic is going to be required.

125. On 8 February 2018 Sir Geoffrey Palmer QC and Elana Geddis provided an opinion to NZFG on various issues relating to captive rear mallards, including an operation that provides access to private land for purpose of shooting in return for a fee in circumstances where access would not otherwise be available. One of the views they came to in that opinion is that making such a charge is contrary to Wildlife Act. If the view in that opinion is accepted by a Court, it appears guiding arrangements for such purposes would not be permissible. It is of course for the Court to determine the proper interpretation of those statutory provisions. However, the opinion shows that access rights in relation to private land are a matter of some legal complexity, and if questions are raised as to the legality of any particular activity such as guiding, they need to be addressed carefully, and not simply on the basis of arguments about 'exclusive capture'.

126. In summary, in relation to 'exclusive capture':

- (a) If there is a concern that the position in relation to Ngamatea comes within the exclusive capture concern of NZFG, in my view further work would need to be done to identify whether in fact that is the case. In particular this would involve consideration as to firstly the fact that the land on the other side of the river is not Ngamatea land and so it would also depend on what access arrangements are available with the owners of that other land, and secondly, whether there are rights to come up the river.
- (b) Even if Ngamatea does come within the definition of exclusive capture under NZFG's approach, the fact that NZFG's policy opposes exclusive capture does not in my view constitute a legal conflict or potential conflict or some other disqualification such as to prevent generally Councillor Bates from being a Councillor, or from him participating in and deliberating on matters which do not involve access to Ngamatea or exclusive capture.
- (c) It does not appear that exclusive capture has been formally brought to the Council as an agenda item either by management or any individual Councillor requesting it to be on the agenda as a policy matter, nor has

the issue of attempting to negotiate rights of access over Ngamatea itself appear to have arisen.

- (d) It might be said that, given Councillor Bates' position as Chair, there would have been a reluctance to initiate any such proposal, but no suggestion has been made to me that there have been any efforts or wish on the part of any HBFG Councillor or management to do so. Nor in my view can it be said that a council member has a conflict or is acting in breach of his or her duties in not bringing to the Council a matter on which he would be conflicted were he to do so.
- (e) What is clear to me, however, is the strength of views of a number of people that exclusive capture is wrong and that Ngamatea is an example of it. That has, in my view, been a source and reason for the tensions and very difficult relationships which have existed between different people, both within NZFG and HBFG and between NZFG and HBFG or various persons involved in those bodies, over a very long period of time.
- (f) It also appears to me that the strength of feeling on this issue held by different people, and the length of time on which it has been an issue, is such that steps could have been taken, and should have been taken, to bring the issues to a head one way or the other, including through having the matter determined by the Courts if an agreement on the position, or even an agreement to disagree, could not be reached .

Captive reared mallards

127. A further question, which has occupied significant time around the Council table, has been the topic of monitoring and breeding captive reared mallards. A comment was made that the Council's approach and processes in relation to monitoring, in particular banding, have in particular been influenced by the position of Councillor Niblett, given his commercial business in raising mallards.

128. Both topics are related to each other, and in particular appear to have been the subject of significant focus at both national and regional levels in at least two ways. The first is what percentage of Council's activities should be engaged in habitat work and in monitoring, and the second, the utility of different monitoring processes particularly from a value for money basis. In relation to HBFG, it appears that there was, in particular around the Council table, strong questioning over the period of the approach and recommendations management were making in relation to monitoring, and in particular, banding and the raising of captive reared mallards.

129. In particular, it is also apparent that 9(2)(a) had strong views on this matter which were the subject of significant questioning by the Council. It is not my role to, nor indeed am I qualified to, express a view on the merits of these issues. However, it is apparent to me that the existence of these different views has caused friction, in particular between staff and the Councillors at times. It is also evident that there may be some natural tensions between the staff coming from a scientific background, and various Councillors who take a different approach. In my view these matters are of such importance that from a governance perspective they are certainly matters appropriately addressed by the Councillors as part of their role, and not from a policy perspective left to management to determine, and to the extent there may be differences of view between management and Councillors, that is simply a matter of day-to-day occurrence.

130. The Council discussed the use of banding as a monitoring tool at the Council meeting on 21 June 2018 at 6pm. No conflicts of interest were registered at that meeting. The Minutes note:

Discussions of why we use banding as a monitoring tool was raised and the concerns how currently the regions bag limits and regulations were set from data recorded from the previous year's banding data. Council enquired with staff of the rationale of banding, the cost of staff time involved and how the 9k external costs were calculated. Council instructed staff to investigate other monitoring options available to produce relevant & current data to assist with setting the bag limits. It was agreed that the long term harvest survey data trends appear to be staying the same. Council agreed they had a statutory obligation to monitor, maintain & enhance and acknowledged the need to fulfil this obligation for the licence holder. It was agreed to remove from gamebird research to remove (iii) investigate the impacts of predators on waterfowl via field trial, from waterfowl monitoring remove (i) the banding and transient count flight survey and remove (ii) investigate the merits of releasing captive reared mallards.

131. 9(2)(a) raised a concern about this decision with Councillor Bates as Acting Regional Manager via email at 8.17am on 27 June 2018.

132. There also have been two related claims put to me. The first is that, because of 9(2)(a) views, including views expressed to Council in relation to CRMs and monitoring, there was pressure applied by some Councillors to have him removed. This has been denied by the relevant Councillors to whom I put the allegation. The second suggestion has been that Councillor Niblett had a conflict of interest because of his communal activities. I do not consider Councillor Niblett's commercial business in itself constituted a potential or actual conflict of interest in relation to banding or monitoring discussions or decisions generally.

Game Bird Regulations

Has any HB councillor been releasing game birds without the proper authority?

133. From the interviews I have conducted, it appears a number of Councillors have been involved with the release of game birds and the ToR involves me reporting on whether any of those releases have been made without the proper authority. Before turning to the issue of what releases were made and whether there are proper authorities for them I comment as follows on the legal position relating to releases.
134. Comment has been made to me to the effect that the creation of 'preserves' and the release of game birds is either not legally justified or, if it is lawful, it is nonetheless not an appropriate part of the fish and game ethos. On the other hand, it is clear to me that whether preserves should be allowed has been canvassed extensively by NZFG and HBFG even though there are differing views on that issue within the fish and game community. The legal position in relation to preserves and gamebirds under the Wildlife Act is complex. However, it appears to me that at present the view taken by DoC is that preserves and the release of game birds can be addressed by authorisations under the Wildlife Act, and such authorisations have been issued¹⁰.
135. It also appears that there was, and possibly still is within the fish and game community, a view that provided a regional fish and game council had an authorisation in its own name to release game birds, that consent could be used and relied upon by individuals in their personal capacities without the need for them to obtain separate authorisations.
136. That view has been stated to me as applying within HBFG until 2014, following which individuals were told by s9(2)(a) they should themselves obtain specific authorisations from DoC. I have also been informed that there are other regional fish and game councils where individuals are acting under an authorisation to the fish and game council, rather than an individual authorisation.
137. If that is the case, it appears the legal position needs to be clarified with DoC and a common approach applied.
138. In relation to actual releases, from my enquiries it appears there are four Councillors who have been involved with releases: Councillors Bates, Hern,

¹⁰ I note the opinion of Sir Geoffrey Palmer QC and Elana Geddis dated 8 February 2018 to NZFG, which includes a detailed consideration of the legal issues relating to the status of captive rear mallards and their release, and captive pheasants that are reared for hunting. In this report I do not review the legal issues canvassed in that opinion.

Niblett and Mackie. I have raised with each of them what authorisations have applied.

Mr Bruce Bates

139. Councillor Bates has stated he releases game birds as part of regular family shoots at Ngamatea. He states that no charge is made for those shoots and they are confined to family and close friends, who share in the costs. Councillor Bates informs me that he considered that initially releases were covered by the specific permit given to Hawkes Bay Fish and Game Council but that following Peter McIntosh's advices in May 2016 applications were made for specific authorisation.
140. I have sighted copies, or had confirmation from DoC, of authorisations given to Councillor Bates in respect of the period 1 April 2016 to 31 October 2016 and to Ngamatea Guided Hunting and Fishing in respect of the period 4 March 2011 to 4 March 2014. I do not have information showing that an authorisation was given for the period 5 March 2014 to 31 March 2016. I have not received information from Councillor Bates as to whether, in respect of that period, any releases were made or whether any consents were obtained.

Mr David Hern

141. On 3 May 2018 an internal email was sent to 9(2)(a) the then-Regional Manager, an email stating that "Over the past couple of days it came to my attention Dave Hern has been releasing Mallards without the proper authority under the conservat on act". In that email he set out the circumstances of the matter which arose as a result of him reading Councillor Hern's application to release mallards which had been forwarded to him by 9(2)(a) of Eastern Fish and Game for comment, consistent with practice in respect of such applications.

142. 9(2)(a) has stated to me that:

"On the morning of Thursday 3rd May 2018, at approximately 7:45am, I received a short email from [name withheld] regarding Councillor Dave Hern not having a permit to release captive rear mallards. I briefly scanned the email on my cell phone before I went in to work. I spoke with [name withheld] for about 30 minutes as [name withheld] was keen to pursue a prosecution regarding this matter and wanted to know how to proceed. I told [name withheld] that he needed to obtain more information as what he had written was quite brief and I wanted to know more information as Manager before I took the matter further. I do recall seeing a video on Facebook that showed Dave Hern talking while filming ducks that had been released but I am not exactly sure of the location. At midday on the 3rd

May, I left the office and did not return to work as I resigned later that evening. The emails should still be there to view at the HB office?

I spoke with Bruce Bates on the 14th May (from memory) as he conducted an exit interview with me. At the end, I asked him whether he had seen the email from [name withheld] regarding the matter with Dave Hern and an alleged lack of a permit to release as I wasn't sure whether he was aware of the issue. Bruce said that he had read my emails as Acting Regional Manager and had seen the email and essentially said that it was all good and that he had would take care of it."

143. Councillor Bates advised me that he had seen the email and had discussed it with 9(2)(a) at 9(2)(a) exit interview.

144. Councillor Bates also stated to the effect that he had said to Councillor Hern that an allegation had been made that he had been releasing birds without authority, to which Councillor Hern said that he had all the necessary permits. Councillor Hern's recollection of the conversation was similar to that of Councillor Bates.

145. Councillor Bates informed me that he did not see it as him being under any necessity to take the matter further as, first, Councillor Hern said that he did have the necessary permits and second, that the issue of any breach in relation to release of game birds was a matter for DoC, not that of HBFG. He said that he relied on assurances given to him by Councillor Hern regarding permits held by him, and that there was no basis for him not to rely on those assurances.

146. I make the following observations:

- (a) It is not clear from the enforcement policies of NZFG and HBFG whether enforcement or compliance with the game bird regulations was within HBFG's remit.
- (b) Nor is there any policy or other document setting out the process to be followed if HBFG became aware of any breach of the Conservation Act, for example in relation to referring any such matter to DoC for its attention.
- (c) There is also no formal arrangement such as a memorandum of understanding between HBFG or NZFG and DoC in relation to enforcement and related matters.
- (d) It is also apparent that HBFG has an interest in the subject of release of game birds and that being the case it could also be said that HBFG has a legitimate interest in any claims of breaches of legislation relating to the activity the subject of permits.

147. I have also considered the action Councillor Bates took, and whether a case could arguably be made that the overall objects of HBFG would have justified Councillor Bates referring this matter to DoC, just as it would have been if a claim had been made in respect of any other person coming to HBFG's knowledge. The fact that Councillor Hern was a Councillor also put HBFG and Councillors Bates and Hern in a difficult position reputationally should such a referral not have been made, as happened in this case. The matter could also have been resolved had Councillor Hern provided Councillor Bates with confirmation that he did have permits, however, given the uncertainties as to HBFG's responsibilities, I do not consider it can be established that either he or Councillor Bates can be said to be in breach of any legal or governance obligation. Nonetheless, in my view Councillor Bates could have taken further steps, for example by referring the matter to the compliance officer for his views. The situation demonstrates the need for clarity as to what legislation does HBFG have a responsibility for in relation to enforcement matters, the delineation between HBFG and DoC, and the desirability of a memorandum of understanding or similar arrangement between HBFG and DoC in relation to situations where breaches of legislation relating to fishing and shooting licences comes to HBFG's attention.

148. I have sighted copies of, or had confirmation from DoC, of authorisations given to Councillor Hern in respect of the periods 1 November 2015, 7 June 2018 to 6 June 2022 and 9 November 2011 to 9 November 2014.

Mr Jeff Niblett

149. Councillor Niblett stated that he or his associated companies have the relevant permits for releasing and supplying game birds.

150. I have sighted authorisations for companies associated with Councillor Niblett for the periods 22 January 2016 to 21 January 2026 (Flying Pheasant NZ Limited); 23 February 2011 to 23 February 2014, 9 November 2011 to 9 November 2014 and 11 October 2013 to 10 October 2023 (New Zealand Game Birds Limited), and 25 January 2016 to 24 January 2026 (Tunanui Game Birds Limited).

Mr James Mackie

151. Councillor Mackie stated he has released mallard ducks on his brother's farm, and that that the game birds were provided by Councillor Hern on the basis that Councillor Hern would arrange the permit and deliver the birds to the permitted address.

152. Councillor Mackie said he cannot recall seeing any paper work from Councillor Hern. He paid for birds and they were delivered. He told Councillor Hern the farm address where birds were getting released.

153. I have not sighted any authorisations or permits in respect of Councillor Mackie personally.

Election of HB Councillors

How many candidates have stood for Hawkes Bay in the last two election cycles?

154. In the 2015 election (held in October 2015-March 2016), 19 candidates stood for eight positions. In the 2018 election (held in September-October 2018), 15 candidates were nominated, and stood, for 12 positions.

If there have not been enough candidates, has any research or enquiry been undertaken to establish why?

155. Prior to the 2015 election there were more positions than candidates, so elections had been unnecessary. Following discussion at National Council level (at which stage Graeme Jobey was the Hawkes Bay National Appointee), the Hawkes Bay Council decided to lower the number of positions to eight in order for there to be a contested election (although there was no formal resolution to that effect). In the event, there were 19 candidates.

What response, if any, has Hawkes Bay made to the situation?

156. Having only eight Councillors in the 2015-2018 term led to issues, particularly when there were abstentions or conflicts of interest meaning that there was not a quorum for a vote. Additionally, one elected Councillor (Peter McIntosh) never attended a meeting. As a result, for the 2018 election the number of positions was increased once again to 12. This was resolved at the 8 August 2017 Council meeting, where it was recorded "*That Council have decided on the number of Councillors required for the 2018 Council elections to be 12 (twelve)*". The Minutes record that Council felt that the more people involved, the better.

157. It has also been stated to me in interviews that the voting process available to Councillors has meant that Councillors of other regional fish and game councils have been able to vote in elections for HBFG Councillors and, second, that there has been campaigning to obtain those out of region votes in order to back one or more particular candidates. Another comment was made to me that at least one initiative has taken place in respect of voting in another region so as to be able to facilitate game preserves in that region. In my view this is an important issue which should be considered by NZFG and DoC responsible for administering the Act. It is not self-evident to me from the provisions of the legislation that voters entitled to vote in the elections for one fish and game council, if they elect not to exercise that vote, can do so in respect of any other region.

158. Section 26Y(1) of the Conservation Act 1987 provides that:

(1) Every New Zealand resident who holds an adult whole season licence that entitles that person to hunt game or fish for sport **in a particular region** in the season immediately preceding the next election, or in the period of three months before the close of the role for any election, of members of the fish and game council for that region shall be entitled to vote at that election."

159. Although there appears to be an issue with the grammar of section 26Y(1), reading it as a whole it appears to tie eligibility to vote at "that election" to the particular region in respect of which the licence holder is entitled to hunt game or fish.

160. Section 26Y(2) then provides that a person may choose to participate in any **such** election, either at the time when he or she purchases a licence to hunt or fish or at any subsequent time before but not later than, one month before, the next election is held.

161. On this basis, if a person does nominate in their licence form whether they wish to choose to participate in the election, they can do so later, but nonetheless it appears that that still relates back to the election in which the licence holder would be entitled to vote under s26Y(1).

162. Differing views were expressed to me in the course of interviews as to whether a practice of voting in different regions from the one in which a licence was held was going on or whether indeed it was known. In my view the importance of the issue is such that it should be examined and, one way or the other, a statement be issued by the appropriate agency as to their view of the legal position.

163. Comment has been made to me that the reduction in Councillor numbers was a result of a scheme to keep the incumbent Councillors in office and initiated by them. However, from other interviews I have conducted it is evident to me that the matter was canvassed openly with NZFG and in fact it appears the reduction may have been at the suggestion of two former Councillors who were not party to the concerns expressed.

HBFG Council Meetings

164. HBFG Council has been acting under Standing Orders set out in the publication dated December 2015. In the interviews I have conducted the key issues have come down to the question of conflicts of interest, allegations that a group have acted in a block and effectively decided matters in advance such that the discussion is a formality, and that in some cases the Minutes are not correct.

165. The topic of conflicts of interest is addressed above. The concern that the meetings have been pre-arranged by Councillor Bates and those associated with him in relation to Ngamatea have been denied.
166. There are differences of view between Councillors as to the conduct of meetings.
167. There have been generalised comments that Minutes have not properly recorded what transpired. I have not been provided with any substantive evidence showing that the Minutes have been falsified. In each case they appear to have been confirmed at subsequent meetings and on their face they appear comprehensive.
168. The Governance Policies provide for Board evaluations to be conducted annually. It appears only one such evaluation has been done and this was done by Councillors themselves without an external facilitator. In my view it is unfortunate that effective evaluations were not conducted annually. In many respects the issues which for a long period have coloured the aspects of the Board's and Council's performance could have been addressed by a robust, regular evaluation process, expressly identifying and addressing the issues of concern and putting steps put in place to address those issues. That was a significant opportunity lost which has meant that these particular issues, and the elements of dysfunction which I consider have existed within HBFG in the period under review have continued not only unremedied, but been exacerbated given the length of time they have been unaddressed.
169. It is also apparent that while many of these issues have been significant and capable of more than one view, the Chair and other Councillors could have put in place a process whereby they could have been identified and addressed constructively.
170. A telling recent example relates to the frustration of some Councillors, including new Councillors, about them being unable to see the material provided to me by HBFG for the purposes of the audit. I understand and accept that there are important issues relating to confidential or personal information in particular which needed to be addressed, but those could have been addressed, in my view, had the Chair in particular and Councillors collectively worked constructively to put in place an acceptable approach to Councillors addressing their reasonable wishes.

Other matters

Length of time concerns have existed

171. It is apparent to me that many of these concerns have existed for a very long period of time and have been insufficiently addressed by HBFG itself. The

governance manual provides a number of ways by which these issues could have been addressed, including the requirement for annual board evaluations, the requirements in respect of the work environments and staff, the requirements for risk management policies and processes to include internal risks, and the requirements for development of governance opportunities. The fact that these concerns went unaddressed has materially contributed to the present position, in my view, which came to a head leading up to my appointment as auditor.

172. Although some Councillors I have interviewed have taken the view that these issues are in the minds of a small minority of Councillors and particular staff members at particular times and are not representative, I do not share this view. There are and have been, in my view, significant causes for tension within HBFG and as between NZFG and HBFG (and particular individuals within NZFG and HBFG) for a considerable period of time which warranted attention. Not only is there a difference in view on specific issues, but there are also differences in view as to whether there are significant differences.

'A Ngamatea connection?'

173. Some interviewees have described a group of Councillors as the "Ngamatea Group" or a "tight five" given claimed affiliations with Ngamatea Station which have inappropriately influenced HBFG Council decisions. The Councillors so identified are Councillors Bates, Hern, Duley, Lumsden and Niblett. Comment has been made to me to the effect that there are or have been other associations between Councillors and that it is unfair to focus on the Ngamatea 'connection', and not the totality of associations of all Councillors. However, as a number of interviewees have raised this as an issue and, if made out, it could have a bearing on various matters covered by my ToR, I have considered it as part of this audit.

174. In this context I note:

- a) Councillor Bates' wife is a trustee of the Trust that own Ngamatea Station. Mr Bates also operates a hunting and fishing guiding operation on Ngamatea Station for profit. He runs a family shoot on Ngamatea annually.
- (b) Councillor Hern is a guide and carries out guided hunts on Ngamatea Station for profit. He explained that there is a daily rate for guiding on Ngamatea, which his clients pay to the Station, less a fee for Mr Hern's guiding services.
- (c) Councillor Niblett provides for profit game birds for the family shoot on Ngamatea.

(d) Councillor Duley is the host of a hunting TV show and the owner of NZ Hunting magazine. He has brought clients (including sponsors and advertisers) to hunt on Ngamatea and has shot some of the TV show there.

(e) It appears Councillor Lumsden has no direct involvement with Ngamatea.

175. On the material available to me, I do not consider these Ngamatea associations presented some general actual or potential conflict. If particular matters came before the Council in respect of Ngamatea, each Member would need to address whether their relationship with Councillor Bates or Ngamatea presented an actual or potential conflict of interest in respect of that issue before the Council. I am not satisfied however that just because these individuals had associations with Councillor Bates or Ngamatea, that presented an actual or potential conflict affecting their ability to vote on any matter where Councillor Bates voted.

176. In respect of Councillor Niblett, he gave me confidential information as to the approximate percentage of his sales derived from Ngamatea. Although the amount was not insignificant in dollar terms, it was not an amount which to me somehow meant his interests were so tied to those of Councillor Bates that it affected his ability to vote, or his interest in voting, on any matter where Councillor Bates voted.

177. It is also apparent to me that voting at HBFG meetings has typically been unanimous or by consensus.

178. Finally, there has been no evidence provided to me that any group of Councillors are deliberately acting as a 'block' contrary to their statutory duties.

General

179. Strong and significantly divergent views have been expressed to me by current and prior Councillors as to the nature of the dealings and interrelationships between Councillors and between Councillors and staff. These range from allegations of bullying conduct at one end, through to views of generally a good dynamic, a united Council, with, on occasion, a disgruntled individual or small numbers of dissatisfied Councillors.

180. I have also been told of use of language, and conduct, which falls short of the level of mutual respect which goes to effective board workings.

181. These are matters which can and could have been readily identified and, with a will to do so, also addressed in regular board and board/staff evaluation processes properly conducted, including by external professionals. The

relevant guides and governance policies of HBFG also include provisions and mechanisms to address matters going to culture, accountability, compliance, conduct, risk management (external and internal) and performance which could have been more effectively used to identify and address many the issues which have arisen in relation to culture, staff matters and relationships between Council members. Other issues in relation to exclusive capture and Ngamatea could have been better addressed through more effective and timely dealings or disposition as between NZFG and those associated with Ngamatea.

182. An audit process is not well suited to making determinations of a "he said" versus "he said" nature. What is evident to me, however, is:

- (a) the strength and divergences in view of different Councillors as to how effectively HBFG has been working. To some, HBFG has been dysfunctional, to others it has been working well;
- (b) the frustrations of some particular Councillors over a long period of time;
- (c) difficulties at staff level with employment disputes;
- (d) the distress and concern particular Councillors and staff members have, in the period under review, felt about the position of HBFG;
- (e) in my view, the culture and effective working of HBFG being influenced by long-standing differences of view on particular matters at both NZFG and HBFG levels in particular in relation to exclusive capture and preserves;
- (f) the very broad range of statutory responsibilities on a Fish and Game Council with unpaid, part-time Council members, and with a small staff, while at the same time working to deliver on objectives, makes governance and compliance, an on-going challenge at the best of times. If a Council is not working effectively, these challenges are exacerbated.

183. It is evident to me that these issues have been left unaddressed for too long. The various Chairs and Councillors over the period, collectively, in my view, have responsibility for this. In making this comment, I wish to make it clear that 'responsibility' collectively does not equate to 'blame' for each of the particular issues which have arisen. Each of the matters which have been raised with me involve action or conduct on the part of different individuals at both Council and staff level, with allegations and cross-allegations as to culpability.

184. I also comment that different Councillors have expressed differing, and often strongly differing, views about each other and the Chair, some very critical,

others very complimentary. In this audit I do not make findings as to the merits of those views. It is not possible in an audit context to do so. However, I do not believe the difficulties collectively encountered can be attributed to any particular individual.

185. Comment has been made to me by some Councillors to the effect that many of the past issues have been resolved or the situation is not as some have described. Comment has been made by other Councillors to the effect that stresses and a toxic atmosphere remain at Board level. In my view issues at Board level remain unresolved.
186. I should record that this audit has not involved a review of current staff, or the atmosphere and culture of HBFG, consequent upon the appointment of 9(2)(a) and his commencement of duties as Regional Manager in September 2018.
187. I must also record I have been impressed by the commitment and enthusiasm for the fish and game community, and the region, which I observed in every current and former Councillor and staff member I interviewed with regard to their roles. Comment has been made to me about the opportunities available to HBFG if the issues canvassed in this report can be resolved.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

ANNEX 1

Audit of Hawkes Bay Fish and Game Council by New Zealand Fish and Game Council

Terms of Reference

Powers of the New Zealand Fish and Game Council

- i. The New Zealand Fish and Game Council ("the Council") has resolved to audit the Hawkes Bay Fish and Game Council (HB) under section 26C(1)(j) of the Conservation Act 1987 and will appoint an Auditor to investigate on its behalf.

Object and Purpose

- ii. The object and purpose of the audit is to investigate the issues raised in letters dated 1 July 2018 and 27 August 2018 about HB.

Process

- iii. The Auditor will provide an initial draft report setting out the circumstances to the Council. The Council will provide a copy of that draft to the Department of Conservation, who may provide a copy to the Minister of Conservation. The Council may then ask the Auditor for a further, expanded draft report as to implications which may be drawn from those circumstances.
- iv. As a general guide, the period to be reviewed in respect of the matters referred to in paragraph 6 below is from 1 January 2013 to 31 August 2018 (a line of inquiry may require more time than that to elicit the necessary information).
- v. The Auditor will provide an initial draft report by 30 November 2018. Following receipt of the draft the Council will then determine what, if any, further matters it wishes to have the report cover before its finalisation.

Scope of Audit

- i. The audit is to examine the activities of HB, including its councillors, officers and employees, in relation to the following matters:

Staff

1. What turnover of staff has occurred over the last four years?
2. What are the reasons for the turnover?
3. Has the performance of HB in carrying out its statutory functions been compromised in any way by staff management turnover?
4. What were the circumstances of, and the processes followed in respect of, the appointment of the Chair of HB as Acting Manager of HB and were the appointment and those processes appropriate?

Enforcement

5. What policies and procedures does HB have in relation to compliance or enforcement and are they appropriate?
6. Were issues raised with or by HB in relation to compliance or enforcement?
7. If so what were they, how were they addressed, and what was the outcome?

Conflicts of interest

8. What policies and processes are in place to identify and address any perceived or real conflicts of interest by councillors?
9. Have the policies and processes been followed?
10. Do any councillors have, or have had, any perceived or actual conflict/s of interest?
11. If so, are they commercial or non-commercial?
12. If they are commercial, what is the level and extent of that commercial conflict?
13. What facts are there to support any allegations that have been made against any councillor about releasing game birds without the proper authority?
14. If so, who were they made by, to whom was it made, and what was the response?
15. Has any perceived or actual conflict of interest had an impact on the performance of the Council?
16. How has the Council handled any question on private capture of public hunting or fishing resources?
17. Is any councillor involved in any commercial or non-commercial activity that may conflict or cause a perceived conflict with the HB's policies and processes or the legal obligations of the HB or a HB councillor (including in relation to promoting and enhancing public access to angling and hunting resources)?

Game Bird Regulations

18. Has any HB councillor been releasing game birds without the proper authority?

19. If so, where were they released?
20. Has any HB councillor been releasing captive reared mallards?
21. If so, when, and under what conditions?

Election of HB Councillors

22. How many candidates have stood for HB in the last two election cycles?
23. If there have not been enough candidates, has any research or enquiry been undertaken to establish why?
24. What response, if any, has HB made to the situation?

HB Council Meetings

25. What standing orders have been used for meetings?
26. Are the standing orders and any other legal requirements followed?
27. What are HB councillors' views about meetings' conduct?

Other Matters

- vi. If, in the course of addressing the matters raised in paragraph 'I' of these Terms of Reference, the person undertaking the audit becomes aware of any other matter he or she considers relevant to the activities of HB (including its councillors, officers, and employees) and the extent it, (including its councillors, officers and employees) is carrying out its activities effectively and efficiently or complying with its statutory obligations, or which shows, or appears to show a lack of probity by HB, its councillors, officers or employees, he or she may report on those matters also.

Confidentiality

- vii. The draft and final reports are to be provided to the Council (through its Chief Executive) by the person undertaking the audit on behalf of the Council. The Council intends to forward a copy to the Department of Conservation and the Minister of Conservation.
- viii. The draft report and audit report (or any part) are to be confidential to the Council and the Department of Conservation, who will decide if those draft or final report/s (or any part) are to be disclosed to any other person. It is acknowledged that the Official Information Act 1982 applies.
- ix. In addition, the Council or the person undertaking the audit on the Council's behalf may disclose all or any part of the draft report or any particular information or comment to any person he or she considers appropriate as part of any requirements of natural justice or fairness or pursuant to the processes by which he or she is undertaking the audit.